

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ALABAMA

SOUTHERN DIVISION

FILED JAN 16 AM 10:50
U.S. DISTRICT COURT
N.D. OF ALABAMA

UNITED STATES OF AMERICA)
)
-v-) CR 00-S-422-S
)
ERIC ROBERT RUDOLPH)

GOVERNMENT'S RESPONSE TO DEFENDANT'S MOTION
FOR CHANGE OF VENUE

Comes Now the United States of America by and through its counsel Alice H. Martin, United States Attorney and Michael W. Whisonant, Robert J. McLean and William R. Chambers, Jr., Assistant United States Attorneys and respectfully file this Response to the Defendant's Motion for Change of Venue filed with this Court on January 30, 2004. In response to the said Motion of the defendant, the United States submits that the defendant has not established any level of prejudice justifying the transfer of the trial in this case to another district. In support thereof, the United States submits the following:

The defendant alleges an overwhelming and sensationalistic amount of media coverage surrounding this case has led to a bias among potential jurors. The defendant claims that this level of media coverage has created a mindset in potential jurors that he is guilty and should be sentenced to death, thus preventing him from being able to obtain a fair and impartial trial anywhere in the Northern District of Alabama. Federal Rule of Criminal Procedure 21(a) provides:

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For Prejudice. Upon the defendant's motion, the court must transfer the proceeding against that defendant to another district if the court is satisfied that so great a prejudice against the defendant exists in the transferring district that the defendant cannot obtain a fair and impartial trial there.

The defendant bears the burden of proving that venue should be changed. *See United States v. Smith*, 918 F.2d 1551, 1557 (11th Cir. 1990). *See also United States v. Livotti*, 196 F.3d 322, 326 (2d Cir. 1999), *cert. denied*, 529 U.S. 1108, 120 S.Ct. 1961 (2000).

Whether a motion to transfer should be granted is left to the discretion of the trial court and a decision to deny a change of venue request will be reversed only for abuse of discretion. *Smith*, 918 F.2d at 1556; *See also United States v. Williams*, 531 F.2d 791, 792 (5th Cir. 1976); *Greenhill v. United States*, 298 F.2d 405, 411 (5th Cir. 1962), *cert. denied*, 372 U.S. 968, 83 S.Ct. 1092 (1963).¹

THE STANDARDS

Analysis of a motion to transfer venue alleging prejudicial pretrial publicity pursuant to Rule 21(a) involves two standards: presumed prejudice and actual prejudice. *See Coleman v. Zant*, 708 F.2d 541 (11th Cir. 1983) and *United States v. Houlihan*, 926 F.Supp.14 (D. Mass. 1996). Presumed prejudice exists where the nature and level of media coverage is so saturating and inflammatory that its prejudicial effect on a defendant may be presumed. Actual prejudice exists where there is a reasonable likelihood that

¹ A pre-trial order denying transfer of venue is not subject to interlocutory review. *United States v. Novellas*, 108 F.3d 1370, 1997 WL 138692, *1 (2d Cir. 1997).

pretrial media coverage has been and/or will be so unduly prejudicial as to deny the defendant a right to a fair trial. The Court in *United States v. Houlihan*, 926 F.Supp.14, 16 (D. Mass. 1996), held that the two step process required to determine whether a change of venue is warranted requires determination of the existence of either presumed prejudice or actual prejudice. *Houlihan* held that a determination of whether prejudice can be presumed requires a review of both the amount and pervasiveness (quantitative) as well as the nature of the publicity (qualitative). A finding of actual prejudice requires a showing of a reasonable likelihood that prejudicial pretrial publicity will prevent a fair trial. *Id.*

PRESUMED PREJUDICE

A presumption of prejudice exists in those rare and extreme circumstances where a court finds that the community has been so saturated with inflammatory pre-trial publicity that it pervades the proceedings and overrides notions of fairness and impartiality in the determination of guilt or innocence. *Murphy v. Florida*, 421 U.S. 794, 95 S.Ct. 2031 (1975); *United States v. Washington*, 813 F.Supp. 269 (D. Vermont 1993); and *United States v. Hernandez*, 106 F.Supp.2d 1317 (S.D.Fla. 2000). In *Ross v. Hopper*, 716 F.2d 1528 (11th Cir. 1983), the Eleventh Circuit defined the defendant's burden in seeking a transfer pursuant to Rule 21(a) prior to trial. According to *Hopper*, a defendant seeking a transfer pursuant to Rule 21(a) must demonstrate: (1) "an actual or identifiable prejudice on the part of the jury resulting from publicity;" (2) "community prejudice actually

infecting the jury box;” or (3) “sufficient evidence that the pretrial publicity has been so inflammatory and prejudicial and so pervasive or saturating the community as to render virtually impossible a fair trial by an impartial jury, thus raising a presumption of prejudice.” *Hopper*, 716 F.2d at 1540. *See Coleman v. Zant*, 708 F.2d 541, 544 (11th Cir. 1983); *Mayola v. State of Alabama*, 623 F.2d 992, 997 (5th Cir. 1980); *Bronstein v. Wainwright*, 646 F.2d 1048 (5th Cir. 1981); *United States v. Capo*, 595 F.2d 1086 (5th Cir. 1979); and *United States v. Hernandez*, 106 F.Supp.2d 1317 (S.D.Fla. 2000).

ACTUAL PREJUDICE

Absent a showing of presumed prejudice, a defendant must establish a reasonable likelihood that pretrial publicity will be so prejudicial as to prevent a fair and impartial trial in order to succeed on a motion to transfer. *Sheppard v. Maxwell*, 384 U.S. 333, 86 S.Ct. 1507 (1966) and *United States v. Moody*, 762 F. Supp 1485, 1490 (N.D. Ga. 1991). In *United States v. Washington*, 813 F.Supp. 269, 273 (D. Vermont 1993), the Court held that a mere showing of adverse pretrial publicity and a substantial familiarity of the case by prospective jurors was insufficient to justify a transfer. Instead any negative publicity must “so permeate the community with prejudice that there is a reasonable likelihood” that the defendant’s right to a fair trial will be compromised. *Id.* *See also United States v. Parker*, 877 F.2d 327, 330 (5th Cir. 1989).

The Court in *Moody* defined this standard, holding that a transfer is warranted when the defendant establishes: (1) the existence of great prejudice; (2) outside

influences affecting the community's opinion as to defendant are "inherently suspect"; (3) there is "reasonable likelihood that prejudicial news prior to trial will prevent a fair trial;" or (4) there is "substantial likelihood" a fair trial cannot be had in the absence of a transfer. *United States v. Moody*, 762 F.Supp. 1485, 1487 (N.D. Ga. 1991). *See also United States v. Williams*, 523 F.2d 1203 (5th Cir. 1975) and *Pamplin v. Mason*, 364 F.2d 1 (5th Cir. 1966). The Court in *United States v. Salim*, 189 F.Supp.2d 93, 95-96 (S.D.N.Y. 2002), defined the level of prejudice from pretrial publicity and media coverage necessary to meet the actual prejudice standard as an "extreme circumstance of a deeply rooted pattern of prejudice."

VENIRE

Common to the application of either standard are the concepts that ignorant jurors are not a prerequisite to a fair trial and notoriety or widespread and even negative publicity are not determinative of whether prejudicial pretrial publicity has eliminated jurors' ability to render a fair and impartial verdict based solely on evidence presented in court. The mere fact that potential jurors are familiar with the case and/or have developed preconceived opinions as to the ultimate issues in the case is not proof that those jurors could not set aside those opinions and base a verdict solely on the evidence presented at trial. *See United States v. Fastow*, 292 F.Supp.2d 914 (S.D.Tex. 2003) and *United States v. Parker*, 877 F.2d 327 (5th Cir. 1989). In *Irwin v. Dowd*, 366 U.S. 717, 722-23, 81 S.Ct. 1639, 1642-43 (1961), the Court, reviewing the case for actual prejudice,

specifically rejected the argument that the mere presence of widespread or adverse media coverage establishes partiality on the part of potential jurors:

It is not required, however, that the jurors be totally ignorant of the facts and issues involved. In these days of swift, widespread and diverse methods of communication, an important case can be expected to arouse the interest of the public in the vicinity, and scarcely any of those best qualified to serve as jurors will not have formed some impression or opinion as to the merits of the case. This is particularly true in criminal cases. To hold that the mere existence of any preconceived notion as to the guilt or innocence of an accused, without more, is sufficient to rebut the presumption of a prospective juror's impartiality would be to establish an impossible standard. It is sufficient if the juror can lay aside his impression or opinion and render a verdict based on the evidence presented in court.

See Murphy v. Florida, 421 U.S. 794, 95 S.Ct. 2031 (1975). In *Calley v. Callaway*, 519 F.2d 184, 210 (5th Cir. 1975), the Fifth Circuit similarly explained:

If, in this age of instant, mass communication, we were to automatically disqualify persons who have heard about an alleged crime from serving as a juror, the inevitable result would be that truly heinous or notorious acts will go unpunished. The law does not prohibit the informed citizen from participating in the affairs of justice. In prominent cases of national concern, we cannot allow widespread publicity concerning these matters to paralyze our system.

See also United States v. Fuentes-Coba, 738 F.2d 1191, 1194 (11th Cir. 1984)(defendant not constitutionally entitled to a trial by jurors ignorant of issues and events)

TIMING AND SOURCE OF PUBLICITY

Other factors to be considered in weighing or evaluating the impact of pretrial publicity and any resulting prejudice to the defendant include the timing (recency) of the coverage, the source of the coverage, and the focus of the publicity. In *United States v.*

Maldonado-Rivera, 922 F.2d 934, 967(2d Cir. 1990), the Second Circuit noted that courts reviewing a motion to transfer should consider:

[T]he extent to which the government is responsible for generating the publicity, the extent to which the publicity focuses on the crime rather than on the individual defendants charged with it, and other factors reflecting on the likely effect of the publicity on the ability of potential jurors in the district to hear the evidence impartially.

See Beck v. Washington, 369 U.S. 541, 82 S.Ct. 995 (1962); *Wansley v. Slayton*, 487 F.2d 90 (4th Cir. 1973); and *United States v. Salim*, 189 F.Supp.2d 93 (S.D.N.Y. 2002).

ARGUMENT

Analysis of the defendant's claims solely under the controlling legal precedent set out herein above, reveals he has established neither the existence of a presumed prejudice nor a reasonable likelihood that prejudicial pretrial media coverage will infringe on his right to a fair and impartial jury and trial, actual prejudice. The defendant has not sufficiently alleged that the media coverage of this case gives rise to a presumption of prejudice. More importantly, however, is the fact that he cannot do so. The defendant has not and cannot legitimately characterize the media coverage in this case as saturating, pervasive, or incessant, nor of such nature and scope that the concepts of impartiality and fairness have been overridden. The media coverage of this case has been primarily factual in nature, focusing on the crime itself rather than the defendant. Pretrial publicity has not depicted the defendant as guilty, contained recitations of confessions or extrajudicial statements of witnesses, demonized the defendant, presented a layout of the

evidence and case against the defendant, or discussed the character of the alleged crime. *See Coleman v. Kemp*, 778 F.2d 1487 (11th Cir. 1985), *cert. denied*, 476 U.S. 1164, 106 S.Ct. 2289; *Rideau v. Louisiana*, 373 U.S. 723, 83 S.Ct. 1417 (1963); *Irvin v. Dowd*, 366 U.S. 717, 81 S.Ct. 1639 (1961); and *United States v. McVeigh*, 918 F.Supp. 1467 (W.D. Okla. 1996). Publicity cannot reasonably be described as centralized in this District, as the events surrounding the alleged offense and the actions of the defendant equally impacted this District as well as the Northern District of Georgia and the Western District of North Carolina. The defendant simply has not identified any pretrial publicity which could give rise to the presumption of an enduring and steadfast prejudicial effect on potential jurors.

Even if the existence of negative pretrial publicity is assumed, the defendant has nevertheless failed to show that the level of this publicity is such that it has saturated or permeated the community with prejudice against him to the point that it is reasonable to conclude that potential jurors could not set aside their opinions and reach a verdict based solely on evidence presented at trial. The defendant, through polling and statistical data, has merely established the fact that publicity of this case was widespread and many potential jurors in this District and elsewhere have some preconceived notions or opinions as to the guilt or innocence of the defendant based on that media coverage. As stated above, the existence of widespread or even negative media coverage alone does not translate into prejudice nor establishes any likelihood that the defendant will be denied a

fair trial. The concept that widespread or negative publicity as being demonstrative of prejudice or indicative of whether there is a reasonable likelihood that the defendant's right to a fair trial has been universally rejected. Similarly, the mere existence of preconceived opinions as to the defendant's guilt or innocence arising from publicity does not establish any likelihood that the defendant will be denied a jury comprised of impartial and unbiased members. Ignorance of the case is not a qualification for serving as a juror. The existence of actual prejudice requires proof that jurors could not disregard or lay aside their impressions or opinions and any verdict they reached would not be based solely on evidence presented in court. The United States submits that the defendant has not presented this court with any proof whatsoever that the pretrial publicity of this case has done anything more than merely create opinions and ideas in the minds of prospective jurors as to the issues in this case. Mere speculation and generalizations are insufficient to satisfy the defendant's burden under either the presumed or actual prejudice standard, required to succeed on a motion to transfer or change venue. It is well recognized that the defendant must sustain his burden through "demonstrable reality." *Beck v. Washington*, 369 U.S. 541, 558, 82 S.Ct. 955, 964 (1962).

Lessening the impact of the pretrial publicity in this case is the fact that there has been a lapse of over five years from the date of the alleged offense and the date of the defendant's arrest. While the amount of media coverage around the time of the alleged offense and the commencement of the nationwide manhunt was significant, that coverage

greatly decreased during the five years Rudolph remained at large and was virtually non-existent prior to the defendant's arrest. Media coverage and publicity obviously increased upon the defendant's arrest and transfer to this District, but has since decreased again. While we can certainly expect another increase in media attention as the trial nears, the lapse of time between the event and the present trial is significant. *See Beck v. Washington*, 369 U.S. 541, 82 S.Ct. 995 (1962) and *Wansley v. Slayton*, 487 F.2d 90 (4th Cir. 1973). Recent media coverage has included brief summaries of the events surrounding the alleged offense but has concentrated on the judicial process now underway and has been limited to a recitation of publicly available facts and information.

The United States has neither sought out nor encouraged media coverage in this case. To the contrary, the United States has limited its exposure in the media to press releases which have provided publicly available factual information. Neither agents nor prosecutors have made statements to the press nor has incriminating information been released by the government. It is worthwhile to note that since the defendant's arrest, the majority of the media coverage has been initiated and driven by the defense. Since proceedings in this District commenced in June 2003, the media coverage is more accurately characterized by press conferences, television and radio appearances conducted by the defense on the courthouse steps and from their offices. During the pendency of the defendant's Motion to Transfer the media has been replete with comments, articles, letters to the editor, and television spots by the defense team.

Ironically, in many of these press appearances, the defense has argued that press coverage will prevent the defendant from receiving a fair trial. The motion to transfer on grounds of prejudicial media coverage cannot be taken seriously when the defense is actually creating media attention and coverage by arguing this issue in the media.

DEFENSE POLLING DATA AND MEDIA ANALYSIS

In support of his Motion for Change of Venue the defendant has submitted polling data obtained from telephone polls conducted in this and other districts. The defendant asserts that the data obtained from these polls establishes a prejudicial effect of pretrial media on potential jurors in this district, a predisposition on the part of potential jurors from this district that the defendant is guilty and a predisposition in favor of the death penalty. The defendant has also submitted an analysis of pretrial media coverage of this case and concludes that the media coverage in this case has been such that Birmingham residents, residents from the Southern Division of the Northern District of Alabama, are incapable of fairly deciding this case because of the high level of biased media coverage and a sense of vindictiveness.

While the United States has thus far concentrated on analysis of the defendant's Motion for Change of Venue under governing legal principles, the polling data and media analysis he has submitted in support of his Motion must be addressed in detail. The United States submits that the polling data submitted by the defendant is rife with inherent and fundamental methodological flaws in the procedures used to conduct the

poll, computation of data and the conclusions drawn therefrom. While the United States will briefly address the problems associated with the polling data submitted by the defendant in support of his Motion, the United States has attached hereto and incorporates herein the Affidavit of Dr. Kirk W. Elifson, Ph.D. and Dr. Lesley Williams Reid, Ph.D. (Attachment A), which addresses both the polling, polling data and media analysis.² The United States would briefly point out that the poll was designed and conducted in such a way so as to overestimate and inflate familiarity and prejudgment of this case. It should also be noted that there exist fundamental errors in how the sample was selected for the poll so as to bias the results in favor of the defense. Flaws in the manner in which the poll was conducted, the computation of the data and the erroneous conclusions drawn therefrom are fully discussed in the attached Affidavit of Drs. Elifson and Reid.

Equally troubling are the conclusions reached by the defendant in his analysis of the media coverage of this case. Conclusions as to the nature and impact of media coverage appear to be both incorrect and assumed. These conclusions have been presented without details as to how they were reached and the methodology used. Furthermore, the reasoning that the perceived nature and extent of the media coverage has somehow led to a sense of vindictiveness on the part of Birmingham area residents is speculative at best. Again, the media analysis conducted by the defendant in support of his Motion, the conclusions drawn therefrom and an independent media analysis of Drs.

² Attached hereto as Attachment B and C are the curricula vitae of Dr. Elifson and Dr. Reid.

Elifson and Reid are addressed in Attachment A.

PRECAUTIONARY MEASURES

Although the defendant has not established grounds for the transfer of this case due to alleged prejudicial media coverage, there are several well tested safeguards that can be employed by the court to ensure that the jury is comprised of members who are fair, impartial and disinterested. Extensive, careful and thorough voir dire examination of prospective jurors has virtually universal acceptance as the best means to guard against bias entering the jury box through prejudicial publicity and ensuring that jurors can set aside any preconceived opinions of the case and base their verdict solely on the evidence presented. *United States v. Capo*, 595 F.2d 1086 (5th Cir. 1979) and *United States v. Fuentes-Coba*, 738 F.2d 1191 (11th Cir. 1984).

In *Sheppard v. Maxwell*, the Court noted that a number of precautions and prophylactic measures are available to the court to control any effects of publicity. The Court noted that the trial judge could: (1) adopt stricter rules governing the media during the trial; (2) insulate all witnesses; and/or (3) make efforts to control the release of information and extrajudicial statements to the press by police officers, witnesses, and counsel for both sides. *United States v. Washington*, 813 F. Supp. 269 (D. Vermont 1993).

This Court also has at its disposal other options to both lessen the effect of pretrial publicity and ensure a fair and impartial jury is selected. While this case is presently

assigned to the Southern Division of the Northern District, there are a total four jury selection divisions. Expanding the pool of potential jurors may also lessen the perceived effect of pretrial publicity thus far and provide a more diverse venire with less familiarity of the case. The United States would also point out that the prior and long standing method for selecting jurors in all cases in this District was to draw the pool of potential jurors from the entire district. Such a practice, while not guaranteeing a venire totally ignorant of the case, does have the potential to draw jurors from diverse areas and backgrounds and may make for a more balanced jury in terms of familiarity based on pretrial publicity.

CONCLUSION

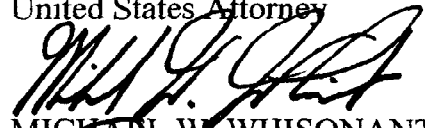
Premised on analysis of the legal authorities outlined above, the Motion of the defendant and supporting materials and the attached Affidavit of Drs. Elifson and Reid, the United States submits that the defendant has not established the existence of pretrial prejudice, neither presumed nor actual, arising from media coverage of this case. The necessary level and type of media coverage, impact or effect to justify a transfer is simply non-existent. The defendant's Motion and accompanying data and analyses merely establish the existence of pretrial publicity and the fact that prospective jurors have heard of this case and may have established preconceived notions as to the ultimate issues involved. What the defendant has failed to establish is that potential jurors could not set aside these notions and render a verdict based solely on evidence presented in court.

Jurors totally ignorant of the case and surrounding facts are not a prerequisite to a fair trial.

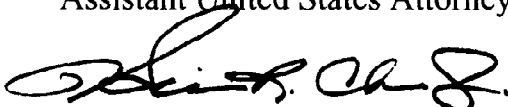
The United States respectfully submits that the defendant's Motion for Change of Venue is without legal or factual support and is, therefore; due to be denied in its entirety and this case remain set for trial in the Northern District of Alabama, Southern Division.

Respectfully submitted this the ^{18th} day of June, 2004.

ALICE H. MARTIN
United States Attorney


MICHAEL W. WHISONANT
Assistant United States Attorney


ROBERT J. MCLEAN
Assistant United States Attorney

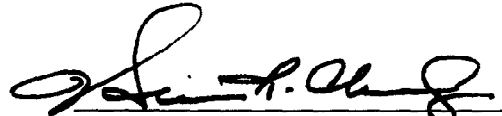

WILLIAM R. CHAMBERS, JR.
Assistant United States Attorney

CERTIFICATE OF SERVICE

This is to certify that a copy of the foregoing has been served on the defendant by mailing a copy of same this date, June 18, 2004, by First Class, United States mail, postage prepaid, to his attorneys of record,

Mssrs. Richard Jaffe, Michael Burt, Emory Anthony, and Ms. Judy Clarke
c/oJaffe, Strickland & Drennan
2320 Arlington Avenue
Birmingham, Alabama 35205

Mr. William Bowen
White, Arnold, Andrews & Dowd
2025 3rd Avenue North, Suite 600
Birmingham, Alabama 35203


WILLIAM R. CHAMBERS, JR.
Assistant United States Attorney

Attachment A

AFFIDAVIT

COME NOW the undersigned Kirk W. Elifson, Ph.D. and Lesley Williams Reid, Ph.D., who are both over nineteen years of age and otherwise competent to testify to the following, and who being first duly sworn do upon such oath swear and affirm the following:

“We are submitting an affidavit with respect to research conducted regarding the Eric Robert Rudolph change of venue motion. Kirk W. Elifson resides in Atlanta, Georgia. He is currently a professor of sociology at Georgia State University, where he has served on the faculty since 1972. He received a B.A. degree in sociology from Knox College and an M.A. and Ph.D. in sociology from Vanderbilt University.

Lesley Williams Reid resides in Atlanta, Georgia. She is currently an assistant professor of sociology at Georgia State University, where she has served on the faculty since 2000. She received a B.A. in sociology from Wake Forest University and an M.A. and Ph.D. in sociology from Tulane University. Our *curriculum vitae* have been submitted to the court.

We were asked by the United States Attorney’s Office, Northern District of Alabama, to ascertain whether a change of venue in the pending case is warranted. We are responding to the Defendant’s Motion for Change of Venue and supporting documents authored by Professors Patrick Cotter and Craig Haney and Mr. Scott Armstrong. We have received copies of the motion, the supporting documents, the Southern Opinion Research questionnaires, and raw data used to prepare these documents.

Upon reviewing the motion and the defense experts’ analyses of the venire survey and the media coverage, we find no evidence to support a change of venue. The level of local media coverage of the case is insufficient to conclude that there is presumptive bias in the venire. Presumptive juror prejudice, as stated in *Mayola v. Alabama*, “is confined to those instances where the

petitioner can demonstrate an ‘extreme situation’ of inflammatory pretrial publicity that literally saturated the community.”¹ This is clearly not applicable to the pending case. While local media coverage of the case has been substantial, this coverage has been primarily factual in nature and exhibits no evidence of the “carnival atmosphere” typified by publicity in either *Sheppard v. Maxwell* or *Rideau v. Louisiana*.²

Absent evidence of presumed prejudice, the defense must demonstrate that there is actual prejudice in the potential venire. The defense attempts to show this through a series of eight surveys. However the results simply do not reflect a Birmingham venire tainted by media coverage. In fact the results of the defense’s survey of potential jurors in Birmingham are only marginally different than the results from surveys of other locales, and in many respects Birmingham residents appear to be more sympathetic toward the defendant than those residing elsewhere. Furthermore, it is not required that jurors be either completely ignorant of the case or without an opinion about the case.³ As stated in *Irvin v. Dowd*, this would be an “impossible standard.”⁴

The defense submitted three reports in support of their change of venue motion. Mr. Armstrong analyzed the media coverage of the case, Professor Cotter reported on the venue surveys, and Professor Haney linked that media coverage to the survey results. To support our contention that a change of venue is not warranted in this case, we provide a detailed discussion of these three reports and our own supplementary analyses below.

ANALYSIS OF MEDIA COVERAGE

Overview of the Armstrong Report

In his report for the defense, Mr. Armstrong argues that the Birmingham media coverage of this case has been qualitatively and quantitatively different than coverage in the local news elsewhere or coverage in the national news. The bombing occurred in Birmingham and it is expected that the local media will cover the case in greater depth and detail than the national media or the local

¹ *Mayola v. Alabama*, 623 F.2d 992, 997 (5th Cir. 1980).

² *Sheppard v. Maxwell*, 384 U.S. 333 (1966).; *Rideau v. Louisiana*, 373 U.S. 723 (1963).; see also *United States v. Fastow*, 292 F. Supp. 2d 914 (S.D. Tex. 2003).

³ *Irvin v. Dowd*, 366 U.S. 717, 722 (1961).

⁴ *Irvin v. Dowd*, 366 U.S. 717, 723 (1961).

media in areas where the crime did not occur. Hence, we do not dispute this finding. We do, however, contest the claim that the extent of the Birmingham media coverage was quantitatively extensive and qualitatively extreme to the extent that a conclusion of presumptive juror prejudice is warranted.

Mr. Armstrong aims to identify differences in the media coverage of this case across four different potential venues: Birmingham (AL), Huntsville (AL), Nashville (TN), and Seattle (WA). By his own admission, the data on which he bases his analyses are incomplete.⁵ Beyond admitting the limitations in the data, Mr. Armstrong failed to describe the empirical methods guiding his analysis. Mr. Armstrong did provide the prosecution with a document outlining the search for documents to be included in the analysis. He used *LexisNexis* and other indices to identify “mentions of the case.”⁶ We do not doubt that Mr. Armstrong’s collection of print, but not broadcast, media is complete.⁷ He does not, however, explicitly detail the actual analyses strategies used for reaching conclusions from the large volume of national and local media coverage of the case.⁸ Any analysis of pretrial publicity should be based on sound, systematic, empirical analysis of the evidence.⁹ To assess the quality of his analysis, we need information on the operationalization of the critical variables in his analysis. In addition, information is required on the ways in which Mr. Armstrong assessed the validity of his definition and measurement of those critical variables.¹⁰ We will need a codebook and/or a data file where Mr. Armstrong coded the length and content of each item of publicity regarding the case.¹¹ The hallmark of sound, empirical social research is that it can be replicated.¹² Without a clear reporting of the data analysis methods by Mr. Armstrong of the media coverage of the case, we are unable to establish if, and to what extent, his conclusions may be erroneous. We cannot determine how he

⁵ Armstrong, pg. 3.

⁶ Armstrong, Appendix 1.

⁷ See section three of Armstrong’s Appendix A for discussion of the coverage of video footage he sampled.

⁸ We requested and were provided with Professor Armstrong’s discussion of the methodology he used (Appendix A of his report). This discussion provides much detail on how he collected all of the media data, but very little detail on how he analyzed those data.

⁹ For exemplary use of content analysis in a change of venue case, see C. Studebaker et al., “Assessing Pretrial Publicity Effects: Integrating Content Analytic Results,” 24 *Law & Hum. Behav.* 317, 325-330 (2000).

¹⁰ K. A. Neuendorf, *The Content Analysis Guidebook* 112-113 (Sage 2002).

¹¹ As of Thursday, July 17th at 8 pm, we had not received any of this information, despite requests.

¹² K. A. Neuendorf, *The Content Analysis Guidebook* 12 (Sage 2002).

dealt with findings that did not support his argument/hypotheses or how he arrived at his interpretations and conclusions.¹³

Despite limitations of his data and a lack of information on the analytical methods, Mr. Armstrong argues that the local media coverage of this case has been “of an unusual magnitude and intensity across virtually all news outlets in Birmingham” and that there are few recent examples “where an investigation, manhunt, capture and prosecution of a defendant took place so much in the public view and over such a sustained period of time.”¹⁴ While the local media coverage of the case has been intense, it has been anything but sustained. As we will demonstrate through content analysis below, local media coverage of the case has been sporadic. The greatest level of coverage occurred immediately after the bombing in 1998 and in recent months as the preparations for the trial have progressed. This is similar to the case of *United States v. Washington* where it was concluded that the media coverage of the case could not be “described as massive, pervasive, or even incessant.”¹⁵ While Mr. Armstrong presents an overview of the media coverage of the bombing itself, he fails to point out that the vast majority of this type of coverage occurred over six years ago. This is longer than the four years that had passed in *Patton v. Yount*, where the court ruled that the passage of time lessened the impact of inflammatory publicity.¹⁶ Further, the coverage over the past six months in Birmingham has not been inflammatory, but has concentrated on the mundane details of the trial preparations. Such coverage is “less likely to poison the venire pool” than sensationalistic details of the crime.¹⁷

Mr. Armstrong’s report does not include an analysis of the defense’s survey data. However, in his report he presents Birmingham residents as incapable of fairly deciding this case. His reasons for this conclusion are that these residents have been inundated by supposedly biasing media coverage and that they are unique in their sense of vindictiveness. Mr. Armstrong alleges that the 1963 bombing of the 16th Street Church has left Birmingham with a vigilante mentality

¹³ As we continue to receive additional documentation from the defense, we continue our own inquiry of the extent of media coverage and its potential impact on the venire pool.

¹⁴ Armstrong, pg. 29.

¹⁵ *United States v. Washington*, 813 F. Supp. 269, 273 (D. Vt. 1993).

¹⁶ *Patton v. Yount*, 467 U.S. 1025 (1984).

¹⁷ *United States v. Lindh*, 212 F. Supp. 2d 541, 549 (E.D. Va. 2002).

that aims to bring “culprits to justice deliberately and directly.”¹⁸ While an interesting hypothesis, little, if any, media coverage of the Rudolph case makes this connection definitively. Moreover, there is no evidence in the defense’s surveys that Birmingham residents themselves are making that connection. Frankly, we doubt that many in the South would see a church bombing, driven by racism, and an abortion clinic bombing, allegedly driven by misguided religious fanaticism, as equivalent crimes. Furthermore, despite a failed motion for a change of venue, the 16th Street Church bombing trials were held in Birmingham. To date, these trials have been affirmed on appeal.

Content Analysis of Birmingham Media Coverage

To add to the portrayal of the media coverage in Mr. Armstrong’s report, we are in the process of conducting our own analysis of the level of pretrial publicity to which the venire could have been exposed. We acquired the full-text of all articles in the *Birmingham News* mentioning the defendant between the bombing and June 2, 2004. The *Birmingham News* is the only daily local paper to electronically index past editions in a publicly available database.¹⁹ We also obtained excerpts of all of the closed captions for broadcasts mentioning the case on local television networks (the ABC, CBS, Fox, NBC, PBS, and WB affiliates) since May 2003.²⁰ All items including any of the following names were examined: Eric Rudolph, Eric Robert Rudolph, Rudolph, Will Chambers, Joe McLean, Mike Whisonant, Alice Martin, Richard Jaffe, Bill Bowen, Hube Dodd, and Judy Clarke.

Our preliminary analysis of these data indicates that in terms of the extent of the coverage, there were numerous mentions of the case in the local print media.²¹ We identified 254 articles in the *Birmingham News* since the bombing six years ago. We base this computation on the full-text articles provided electronically by Mr. Armstrong and our own verification of this tally through a search of the *Birmingham News* online archives. Figure 1 below presents the level of coverage by year in the *Birmingham News*. In relative terms, this level of coverage is modest considering the magnitude of the crime. In *United States v. McDonald* there were 139 articles in the

¹⁸ Armstrong, pg. 27.

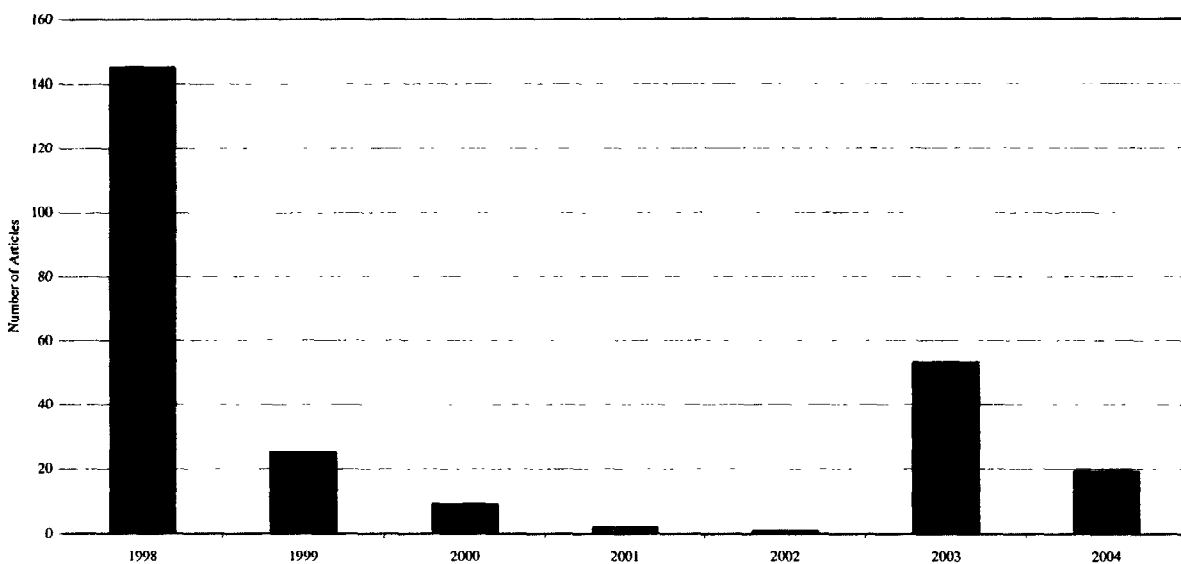
¹⁹ Armstrong, Appendix A.

²⁰ We contracted with a local Birmingham firm that archives local and national television coverage. They were able to provide excerpts of local Birmingham news broadcasts since March 2003.

²¹ We only received media data from the defense last week.

Anchorage Daily News in just the 15 months preceding the trial and in *United States v. De La Vega* there were 330 newspaper articles over a two-year period.²² A change of venue was not granted in either of these cases. A change of venue was granted in *United States v. McVeigh* where there were over 1,000 articles in the *Daily Oklahoman* over a period of 10 months between the bombing and the change of venue hearing.²³ We have acquired and are in the process of analyzing data on local television coverage across all of the local television news outlets. We will continue our data analyses of this material.

Figure 1. Extent of Birmingham News Coverage by Year



Summary

The goal of an analysis of media coverage of a case is to demonstrate that pretrial publicity is demonstrably prejudicial and that it has saturated the potential venire.²⁴ “This standard is reserved for extreme situations where pretrial publicity renders ‘virtually impossible a fair trial by an impartial jury drawn from the community.’”²⁵ Absent clearly egregious media bias, the defense’s polling data must reflect bias as the result of media exposure because extant research

²² *United States v. McDonald*, 740 F. Supp. 757 (D. Alaska 1990).; *United States v. De La Vega*, 913 F.2d 861 (11th Cir. 1990).

²³ C. Studebaker et al., *Assessing Pretrial Publicity Effects: Integrating Content Analytic Results*, 24 Law & Hum. Behav. 317, 328 (2000).

²⁴ *United States v. De La Vega*, 913 F.2d 861 (11th Cir. 1990).

²⁵ *United States v. De La Vega*, 913 F.2d 861, 865 (11th Cir. 1990). (citing *Mayola v. Alabama*, 623 F.2d 992, 997 (5th Cir. 1980).)

does not agree on the nature and extent of the effects of media exposure on attitudes.²⁶ Surveys of the potential venire need to show the clear likelihood of actual bias, and as we will demonstrate below, they do not.

Mr. Armstrong asks the court to make a leap of faith that there is a link between the level of media coverage and the beliefs of jurors. There are many reasons to doubt that such a link exists. Even in highly publicized cases, many jurors will have garnered little information from the media. According to the Pew Research Center for the People and the Press, exposure to local media is at an all-time low. As of 2002, on any given day 59% of Americans do not read their local newspaper. Furthermore, 43% of Americans do not watch the local news regularly.²⁷ We have no data on the amount of media coverage to which possible jurors in Birmingham were exposed; the defense's survey did not ask questions to elicit this information. However, the existence of pretrial publicity alone is not grounds for a change of venue. Not all prospective jurors will have been exposed to pretrial publicity and, even if they were exposed, be affected by it. There must be evidence that the pretrial publicity has had an effect on the attitudes of potential jurors.²⁸ Such evidence has not presented regarding this case. One cannot presume bias amongst the venire in Birmingham based simply on media coverage; one must measure the presence or absence of actual bias through polling. In fact polling is "the technique of choice for showing that a likelihood of prejudice exists."²⁹

ANALYSIS OF SURVEY FINDINGS

Overview of the Cotter and Haney Reports

The defense conducted eight separate public opinion surveys in a number of potential venues across the country. Professor Craig Haney used three of the eight surveys conducted by Professor Cotter to draft a report assessing the level of public awareness and the extent of prejudgment of the case. Professor Haney concludes that in terms of local media coverage "the Birmingham community is much more affected and much more prejudiced by it, as indexed by

²⁶ D. McQuail, *Mass Communication Theory* 327 (Sage 1994).

²⁷ Pew Research Center for the People and the Press, *Biennial Media Consumption Survey*, (June 2002), at <http://people-press.org/reports/print.php3?PageID=618>.

²⁸ *Murphy v. Florida*, 421 U.S. 794, 799 (1975).

²⁹ M. Nietzel and R. Dillehay. *Psychologists as Consultants for Changes of Venue*, 7 Law & Hum. Behav. 309, 312, (2000).

the results of public opinion polls.”³⁰ However, our careful examination of the text of the survey and the methodology used to implement the surveys reveal serious weaknesses that undermine any conclusions drawn from the survey data. Furthermore, our analysis of the results of all eight of the surveys, despite their flaws, indicates that Professor Haney overstates the differences in the attitudes of Birmingham residents versus residents of other potential venues.

Methodological Weaknesses of the Survey Design

Before addressing Professor Haney’s findings as presented in his report, we must express our concerns with the quality of the survey data upon which he relies and that were collected by Professor Cotter. The venire surveys exhibit serious methodological weaknesses. First, the survey itself was designed in such a way as to overestimate both the respondents’ familiarity with and prejudgment of the case. Second, there were errors in how the sample was selected for the survey of Birmingham residents that may have biased the results in favor of the defense. We outline support for these findings below.

Recall of the Case

The representation of the data on the public’s *recall* of the case (i.e. their familiarity with the case) is incomplete and inaccurate. We base this conclusion on the fact that (1) within the Birmingham area few respondents mention the clinic bombing without being prompted by the interviewer, and (2) the wording of the survey inflates the level of public familiarity with the case.

(1) In terms of familiarity with “any specific murder case in Birmingham in the last six years” (Question 2 in the defense surveys, see Appendix A), the results indicate 42% in the Central Divisional Area of Alabama were able to name *any* murder case.³¹ When asked what they remembered reading or hearing about this case, only 2% of all respondents mentioned the Rudolph case without being prompted. Clearly the local media coverage has not been so extensive that Birmingham residents have only the Rudolph case on their minds.

³⁰ Haney, pg. 10.

³¹ This term refers to the jury plan containing four divisional areas. The Central Divisional Area is contiguous with the Southern Division. We use this term instead because the defense surveys encompass multiple divisions.

(2) When questioned whether they were familiar with “a murder case involving a bomb being set off outside a women’s health clinic in Birmingham, Alabama in January 1998” (Question 4), 97% of the respondents in the Central Divisional Area responded “yes.” This number may appear to be high. However, contrary to Professor Haney’s claim, there have been many other high profile cases, where familiarity with the case was equally pervasive.³² In *Bundy v. Dugger*, there was no finding of presumed prejudice even though 98% of survey respondents actually could name Bundy without prompting.³³ In the venue surveys conducted by Davis and Associates for the 16th Street Church bombing trials, 99.4% of residents had heard of the bombing and over 30% could name at least one of the defendants (of the 400 residents polled). By contrast, when asked what they remembered about this case, only 1.5% of Birmingham respondents mentioned Rudolph by name when simply asked if they remember a murder case in Birmingham (Question 3). It is also important to note that familiarity or knowledge about a case does not equate with bias. As stated in *United States v. Higgs*, “it is a long-settled proposition that mere knowledge of a case is insufficient to support a finding of actual prejudice.”³⁴

Furthermore, these numbers are artificially inflated by acquiescence bias. In surveys, it is common for respondents to indicate that they have heard of something, when they actually have not, in order to avoid appearing uninformed. This is known as acquiescence bias. In the defense surveys, Question 4 asked respondents,

“Do you recall hearing or reading about a murder case involving a bomb being set off outside a women’s health clinic in Birmingham, Alabama in January 1998?”

Survey researchers often ask respondents to provide factual information about an event they claim to recall as a means of avoiding acquiescence bias. Respondents who truly remember a case should be able to provide some minor detail about the incident. Those who cannot provide any further information are likely acquiescing and responding yes to avoid appearing uninformed. In the defense surveys, respondents were asked specifically what they remembered about the clinic bombing. However, the defense researchers never coded these open-ended responses for any specific mention of the Rudolph case.

³² Haney, pg. 5.

³³ *Bundy v. Dugger*, 850 F.2d 1402, 1425 (11th Cir. 1988).

³⁴ *United States v. Higgs*, 353 F.3d 281, 309 (4th Cir. 2003).

Prejudgment of the Case

The representation of the data on the public's perception of the defendant's guilt is similarly inaccurate. The defense survey biases the results by (1) providing respondents with an inflammatory background sketch, (2) failing to allow respondents to say they have no opinion, (3) presenting respondents with answer categories that emphasize guilt, and (4) not asking respondents if they could set aside what they have heard about the case and decide it on its merits.

(1) In order to assess whether respondents thought the defendant was guilty or innocent, the defense asked the following question (Question 6) to those who answered yes to Question 4 (above),

“As you may know, the bomb which exploded outside the Birmingham abortion clinic killed a police officer and injured a nurse. The person charged with the bombing is Eric Robert Rudolph. He was the subject of a large FBI manhunt in the mountains of western North Carolina which lasted for several years. He has been accused of being involved in several bombings in the Atlanta area, including one, which took place during the Olympics. Based upon what you know about the Birmingham abortion clinic bombing case, do you think that Eric Robert Rudolph is definitely guilty, probably guilty, possibly guilty, possibly not guilty, probably not guilty, or definitely not guilty?”

Respondents who answered no to Question 4 (above), were asked Question 7, as follows,

“Now let me ask you about an event which occurred in Birmingham, Alabama in January, 1998. This event involved a bomb which exploded outside an abortion clinic. The explosion killed a police officer and injured a nurse. The person charged with the bombing is Eric Robert Rudolph. He was the subject of a large FBI manhunt in the mountains of western North Carolina which lasted for several years. He has been accused of being involved in several bombings in the Atlanta area, including one that took place during the Olympics. Do you recall reading or hearing anything about this event?”

Respondents who answered yes to this question were then asked Question 8,

“Based upon what you know about the Birmingham abortion clinic bombing case, do you think that Eric Robert Rudolph is definitely guilty, probably guilty, possibly guilty, possibly not guilty, probably not guilty, or definitely not guilty?”

The content of the background sketch included in Questions 6 and 7 leads respondents to express a greater sentiment toward the defendant's guilt than they would have, had the background sketch been more factual and less inflammatory. The wording is not neutral and clearly characterizes the defendant in a negative light.³⁵ That the defendant allegedly attacked authority figures, was the subject of a manhunt, and was implicated in the highly volatile Olympic Park bombing case presents the image of Mr. Rudolph as a serious career offender. Respondents may conclude that the defendant is a danger to society and find him guilty based on the tone of the background sketch as opposed to the facts of the case. Including such inflammatory details in the description of the case leads more people to express punitive attitudes, regardless of what they actually believe. In addition, the background sketch mentions the Atlanta Olympic bombing, a crime for which Mr. Rudolph is not being tried in Birmingham.

(2) Before being asked if they thought the defendant was guilty, respondents should have been asked directly if they had formed an opinion about the defendant's guilt or innocence. Such a question is known as a filter. Filtering is necessary because without it we may obtain pseudo-opinions. A documented validity concern in research is that respondents who have no opinion on an issue may offer an opinion anyhow. The way to avoid pseudo-opinions is to filter by first asking, "Do you have an opinion about the guilt or innocence of the man who has been charged with this crime?" If yes, then the question is asked eliciting the respondent's opinion.

(3) After being presented with the inflammatory background sketch, respondents were asked if they thought the defendant was "definitely guilty, probably guilty, possibly guilty, possibly not guilty, probably not guilty, or definitely not guilty." These categories repeatedly include the word guilty, biasing the responses toward an expression of greater guilt than a more neutral set of categories would have for three reasons.

First, no response option was provided for those who had no opinion. Absent the type of filter discussed above, respondents should have at least been given the option to say they had no opinion when asked about the defendant's guilt. When presented with a list of possible

³⁵ See *United States v. Hernandez*, 106 F. Supp. 2d 1317, 1323 (S.D. Fla. 2000). for a similar critique of a defense change of venue survey.

responses to a survey question, people tend to choose a response category that is presented instead of creating a new category that more accurately expresses their opinion. By not presenting respondents with the option of saying that they did not know what they thought about the defendant's guilt or innocence, the defense forced the respondents to form an opinion, based on limited and biased information.

Second, by including the term guilt in every response category, the survey implies to the respondent that the defendant is guilty. A more neutrally designed response category set would include the terms guilty and innocent, reading: "definitely guilty, probably guilty, possibly guilty, possibly innocent, probably innocent, definitely innocent."

Third, the response categories should have been read to different respondents in different orders. Based on the directions to the interviewers provided with the questionnaires, it does not appear that this was done in the defense surveys. At random, 50% of the respondents should have been read definitely guilty, followed by probably guilty, possibly guilty, possibly innocent, probably innocent, definitely innocent, and don't know/no opinion. The other 50% of respondents should have been read definitely innocent first, followed by probably innocent, possibly innocent, possibly guilty, and so on. Sound methodology requires that response choices such as these be randomized to avoid primacy effects. Primacy occurs when the respondent focuses on the first choice read and fails to "hear" the remaining choices. In other words, some respondents are more likely to give whatever response is read first, regardless of their actual opinion. In these surveys, the first choice every respondent heard was definitely guilty, so the primacy effects were all in the direction of increasing the reported opinion of guilt. Randomizing the order that the responses were read in would have led to half of the primacy bias being in the direction of guilt and half being in the direction of innocence, thereby canceling each other out.

(4) Nowhere in the survey is the crucial question, "Could you set aside what you have heard, read, or seen and base your verdict solely upon the evidence presented in the courtroom?" This is a valid question that prospective jurors should answer after they have been instructed as to their responsibilities and obligations as jurors. Jurors are not expected to enter the courtroom with no opinions. The true test would be whether the juror could set aside any opinions. In his

order denying the defense motion to transfer venue in *United States v. Graham*, this is what Judge Blackburn calls “the quintessential question of voir dire.”³⁶ In Professor Haney’s report for the defense, he discounts this ruling by arguing that research finds voir dire ineffective because prospective jurors will not answer this question honestly believing it may “portray them in a negative light.”³⁷ While this is quite possible, the research is not unequivocal.³⁸ For example, in the venire surveys conducted in the 16th Street Church bombing trials, a large number (43%) of Birmingham respondents stated candidly to telephone interviewers that they would not be able to set aside what they had heard about the case or that they were uncertain if they could set aside what they heard.

Methodological Weaknesses of the Data Collection

Beyond the questionnaire weaknesses, errors in the sample construction call the accuracy of the defense’s surveys into question and may have likely led to a sample that is not representative of the population. Hence, we cannot assume that the findings of this survey would be in any way similar to what we would find through voir dire of actual jurors.

Sampling Errors

The following issues call into question the accuracy and representativeness of the sample selected for the Central Divisional Area survey.

1) For the Birmingham sample, 17,859 unique phone numbers were called to elicit 800 interviews for the Central Divisional Area and Eastern Divisional Area surveys combined. (Southern Opinion Research, led by Professor Cotter, drew one sample for both the Central Divisional Area and the Eastern Divisional Area surveys.) Survey findings typically include a reference to the response rate. A low response rate often indicates a non-representative sample because those few who complete the survey likely are different in some important way from those who do not complete the survey. Common response rates in non-marketing telephone surveys range anywhere from 70% in the University of Michigan’s Survey of Consumer

³⁶ *United States v. Graham*, No. CRIM. 03-CR-89-04-RB, 2003 WL 23198794, at *1 (D. Colo. 2003).

³⁷ Haney, pg. 6.

³⁸ C. Studebaker et al., *Studying Pretrial Publicity Effects*, 26 Law & Hum. Behav. 19, 23 (2002).; John W. Wright & Susan Dente Ross, *Trial by Media*, 2 Comm. & Legal Pol’y 397, 399 (1997).

Attitudes to 49% in an average Centers for Disease Control and Prevention survey.³⁹ The defense did not provide actual response rates for their surveys. It is impossible for us to calculate the precise response rates because the final disposition of each case (i.e., in the end, did a sampled phone number lead to an interview, a refusal, or was no contact ever made) was not provided. To calculate a response rate the following formula is used:

$$\frac{\# \text{ of completed surveys}}{(\# \text{ of completed surveys}) + (\# \text{ of refusals and failure to contact}) + (\# \text{ ineligible or of unknown eligibility})}$$

We cannot calculate this because we do not know which of the numbers called were eligible for the survey. We can, however, calculate a completion rate. A completion rate is the number of completed interviews divided by the sum of completed interviews, refusals, and terminated interviews. We calculated the completion rate for the Central/Eastern Divisional Area sample as follows:

$$\frac{800}{800 + 4115 + 96}$$

The completion rate of the Central and Eastern Divisional Area surveys, combined, was 16%. According to the American Society of Trial Consultants' Standards for Survey Research in Connection with Motions to Change Venue, "a completion rate of over 50% is a reasonable goal." A completion rate of 16% clearly raises questions about the survey sampling methodology and the degree to which we can generalize the results of the survey from the sample to the population of potential jurors.

(2) The survey data include two indicators of county of residence. The researchers assigned a county of residence based on the phone number dialed and in the interview respondents were asked in which county they live. The results presented by the defense use the assigned county of residence to determine if the individual is a potential juror, not the self-reported county of residence. It is best practice in telephone survey research to use the respondents' self-reported county of residence as an indicator of where they live. Telephone exchanges do not adhere to geo-political boundaries, and they often cross county lines; however individuals typically know in which county they live. Self-reported county of residence should have been used as a screening question to determine eligibility for the sample, just as age and voter registration status

³⁹ R. Curtin et al., *The Effects of Response Rate Changes on the Index of Consumer Sentiment*, 64 Pub. Opinion Q. 413, 419 (2000).; G. Langer, *About Response Rates: Some Unresolved Questions*, Pub. Persp. 16, 17 (2003).

were. If someone was called who supposedly lived in Jefferson County, but who reported living in some county outside the Central Divisional Area, that person should not have been interviewed, just as people who reported not being registered to vote were not interviewed. There are 41 cases in the Central Divisional Area where researcher-assigned county and self-reported county do not correspond. That is over 10% of those interviewed. This clear flaw in the sampling methodology undermines the value of the entire survey.

(3) The goal of any probability sample is to produce results that are generalizable to the broader population (i.e. the results based on the sample will hold for the population with a known margin of error). Generalizability requires that each person in the population have an equal chance of being selected for the sample. If you survey telephone numbers to interview an individual, you must weight your results by the number of members in the household eligible for the survey to account for the fact that individuals in larger households will have a lower chance of being selected for the sample than individuals in smaller households. For example, if you live in a household with two other adults, you have a one in three chance of being selected to complete the survey, but if you live in a household with just one other adult, you have a one in two chance of being selected. While the researchers collected data on the number of people in each household, they did not weight their results by household size. In the Central Divisional Area, 16% of individuals lived with more than one other adult.

Sample Bias

Our supplementary analyses indicate that the methodological limitations listed above have yielded a survey sample that is not representative of the population of possible jurors and this lack of representativeness clearly affects the results.

(1) The Central Divisional Area sample has a greater percentage of female respondents than their relative percentage in the population of the Birmingham area (see Table 1). Sixty-four percent of the survey respondents are female while 52% of the Central Divisional Area population is female.

**Table 1. Comparison of Central Divisional Area
Survey Results and Census Data**

	<i>Survey</i>	<i>Census</i>
Female	64%	52%
College Graduates	39%	26%
Management and Professional Occupations	49%	35%

(2) The respondents in the sample have a higher socioeconomic status than the respondents in the general population of the Central Divisional Area. It is common practice to weight telephone survey responses by the number of telephone land-lines in a given household. Random digit dialing leads to a greater likelihood of households with multiple phone numbers being sampled.

In the Central Divisional Area, 24% of households surveyed had more than one telephone line. This introduces bias into the survey because households with multiple phone lines are likely to have higher incomes and those with higher incomes may tend to express greater attributions of guilt than those with lower incomes.

While there is no measure of income in the survey to test this directly, comparison of 2000 Census data with the defense survey data indicate that the respondents in the sample are more highly educated and of a higher occupational status, two possible proxies for income, than the members of the population from which the sample was drawn. Thirty-nine percent of respondents in the Central Division survey are college graduates. However, according to the 2000 Census, only 26% of this population has a college degree (see Table 1 above). The defense surveys included an open-ended question asking respondents their occupation. However, the defense researchers did not code these responses. To examine the representativeness of the sample in terms of occupation, we coded all of the open-ended responses according to the occupational codes used in the 2000 Census (see Table 1 above). Analysis of the occupation data indicates that 49% of the survey respondents in the Central Divisional Area are employed in management or professional occupations (examples of such occupations include “quality manager,” “CPA,” “business owner,” “corporate executive,” “store manager,” “technical director,” “vice president of a paper company,” “general manager,” “national sales manager,”

and “advertising executive”). According to the 2000 Census, only 35% of the Central Divisional Area population is employed in such occupations. We therefore conclude that the results of this survey are based on a biased sample of potential jurors in the Central Divisional Area of Alabama.

Comparisons Across Alternate Venues

Based on the survey results from all of the eight surveys, we find no merit in selecting any other locale as an alternative venue as the following observations demonstrate.

(1) Professor Haney claims that there are dramatic differences across the potential venues in the percentage of respondents who have prejudged the defendant.⁴⁰ He states that of those who recall the case, 66% of Birmingham respondents, 60% of Nashville respondents, and 59% of Seattle respondents believe the defendant is definitely or probably guilty. These observations are entirely accurate. However, subsequently Professor Haney claims that “because of the much lower recall rates (in Nashville and Seattle), much lower percentages of the overall sample of potential jurors had prejudged the case.”⁴¹ He states that “in Nashville, 39.6% of the overall sample of potential jurors had prejudged the case, and in Seattle 27.7% had (compared to 64% of potential Birmingham jurors).”⁴² This is an egregious misrepresentation of the data.

The defense surveys asked a series of questions to assess the recall rate and the prejudgment rate of the potential venues. We discussed this series of questions earlier, but let us revisit them here. Respondents were first asked, in Question 4 (see Appendix A),

“Do you recall hearing or reading about a murder case involving a bomb being set off outside a women’s health clinic in Birmingham, Alabama in January 1998?”

To those who responded “yes” to Question 4, the defense asked Question 6,

“As you may know, the bomb which exploded outside the Birmingham abortion clinic killed a police officer and injured a nurse. The person charged with the bombing is Eric Robert Rudolph. He was the subject of a large FBI manhunt in the mountains of western North Carolina which lasted for several years. He has been accused of being involved in several bombings in the Atlanta area, including

⁴⁰ Haney, pg. 5.

⁴¹ Haney, pg. 5.

⁴² Haney, pg. 5.

one that took place during the Olympics. Based upon what you know about the Birmingham abortion clinic bombing case, do you think that Eric Robert Rudolph is definitely guilty, probably guilty, possibly guilty, possibly not guilty, probably not guilty, or definitely not guilty?"

Those who responded "no" to Question 4 were not asked Question 6, but were instead asked Question 7, as follows,

"Now let me ask you about an event which occurred in Birmingham, Alabama in January, 1998. This event involved a bomb which exploded outside an abortion clinic. The explosion killed a police officer and injured a nurse. The person charged with the bombing is Eric Robert Rudolph. He was the subject of a large FBI manhunt in the mountains of western North Carolina which lasted for several years. He has been accused of being involved in several bombings in the Atlanta area, including one which took place during the Olympics. Do you recall reading or hearing anything about this event?"

Respondents who answered "yes" to this question were then asked Question 8,

"Based upon what you know about the Birmingham abortion clinic bombing case, do you think that Eric Robert Rudolph is definitely guilty, probably guilty, possibly guilty, possibly not guilty, probably not guilty, or definitely not guilty?"

Professor Haney calculates his prejudgment rate of the entire sample by dividing the number of respondents who answered "definitely guilty" or "probably guilty" to Question 6, by the total sample size of 400. For example, in Seattle 111 respondents answered "definitely guilty" or "probably guilty" to Question 6. Divide 111 by the sample size of 400 and you have a prejudgment rate of .277, or 27.7%. The problem is that this calculation ignores the 164 people who were not asked Question 6.

The bombing occurred in Birmingham, hence more people in Birmingham could recall the incident when provided with only the few details provided in Question 4 than could people in Nashville or Seattle. But when given further details in Question 7, more respondents from Nashville and Seattle remembered the incident. The observed difference between the Birmingham, Nashville and Seattle prejudgment rates, as calculated by Professor Haney, is not the result of differences in the actual level of prejudgment; it is simply the result of differences in the number of people who were asked Question 6.

A more accurate prejudgment rate would include the responses of both those who were asked Question 6 and those who were asked Question 8 (see Table 2). We calculated the prejudgment rate correctly by adding the number of people who responded “definitely guilty” or “probably guilty” to either Question 6 or Question 8 and dividing that sum by the total number of people who were asked either Question 6 or Question 8. This tells us the percentage of respondents who believe that the defendant is guilty, regardless of whether they recall the case when given few details or when given many details. This clearly shows that the difference in the potential venires is not nearly as great as Professor Haney contends. We see that 65.5% of Birmingham respondents believe that the defendant is definitely or probably guilty, 54.7% of Nashville respondents (not 39.6%), and 41.5% of Seattle respondents (not 27.7%).

Table 2. Comparison of Survey Results on Guilt or Innocence

	<i>Central Divisional Area</i>	<i>Northern/ Western Divisional Areas</i>	<i>Eastern Divisional Area</i>	<i>Nashville</i>	<i>Knoxville</i>	<i>Seattle</i>	<i>Milwaukee</i>	<i>Cincinnati</i>
Definitely Guilty	24.3	22.5	24.7	17.8	17.8	10.2	16.3	14.6
Probably Guilty	41.3	36.1	37.4	36.9	39.9	31.3	33.4	32.3
<i>Sum of Definitely or Probably Guilty</i>	<i>65.6</i>	<i>58.6</i>	<i>62.1</i>	<i>54.7</i>	<i>57.7</i>	<i>41.5</i>	<i>49.7</i>	<i>46.9</i>
Possibly Guilty	9.3	15.9	11.2	9.7	11.5	17.6	17.4	21.3
Possibly Not Guilty	5.5	3.0	7.6	5.0	4.2	4.5	1.7	3.6
Probably Not Guilty	0.8	1.0	1.5	1.0	1.0	1.1	1.7	2.2
Definitely Not Guilty	0.3	0.5	1.0	0.0	0.3	0.3	0.3	0.0
Don't Know	18.8	21.0	16.5	29.6	25.2	34.9	29.2	26.0

(2) There is a clear difference between the percent of respondents who believe the defendant is definitely or probably guilty in Birmingham and in Seattle. However, Professor Haney does not report analyses of all of the surveys that the defense conducted. The defense surveyed eight different possible venires, not three. In Alabama, the defense surveyed residents of the Central,

Eastern, and Northern/Western (combined) Divisional Areas of the Northern District. Outside Alabama, the defense surveyed residents of Nashville, Knoxville, Milwaukee, Cincinnati, and Seattle (see Table 3). While the percentage of respondents who believe the defendant is definitely or probably guilty is greatest in the Central Divisional Area of Alabama, nowhere else is the percentage as low as it is in Seattle. However, the purpose of a change of venue is to assure that the venire is biased neither toward guilt or innocence. As argued in *United States v. Lindh*, the defendant “is not entitled to a ‘favorable’ jury... nor is he entitled to a jury that has not been privy to any media reports.”⁴³

(3) Furthermore, the results presented above are even less different than Professor Haney contends. The values presented in the defense survey do not represent the opinions of the *entire* population of residents in the given area, but only the opinions of those sampled (and in the case of the Central Divisional Area the defense sampled only 0.08% of these possible jurors). Beyond the biasing effects we have already discussed, any random sample has a margin of sampling error. Southern Opinion Research reports the margin of sampling error in their surveys to be +/- 5%.⁴⁴ This means that there is a 95% likelihood that if you were to survey *every* resident of the given geopolitical area, instead of just a sample of residents, you would find that their opinions were between five percentage points above and five percentage points below the values found in the survey of the sample. To accurately gauge the differences in opinion regarding the defendant’s guilt between the Central Divisional Area of Alabama and other possible venues, one should compare this range of values, known as the confidence interval, not the absolute numbers found in the survey. We show these numbers in Table 3 below. This means that the percent of the population who feel that the defendant is definitely or probably guilty ranges from 60.5% to 70.5% in the Central Divisional Area (see Table 3). The overlap of the confidence intervals seen in Table 3, between the lower confidence interval of the Central Divisional Area and the upper confidence interval of the Eastern Divisional Area for example, indicates that it is quite likely that there is no difference of opinion in the entire population about the defendant’s guilt between the Central and Eastern Divisional Areas of Alabama and that the differences in the raw numbers presented in the survey are simply the result of sampling error.

⁴³ *United States v. Lindh*, 212 F. Supp. 2d 541, 551 (E.D. Va. 2002).

⁴⁴ Southern Opinion Research, *A Survey of Citizens’ Awareness and Opinions About the Eric Rudolph/Abortion Clinic Bombing Case in the Southern Division of the Northern District of Alabama*, pg. 2. Supplied by the defense.

Likewise, the very small difference between the lower confidence interval of the Central Divisional Area and the upper confidence interval of the Nashville Divisional Area indicates that the differences in opinion in the entire population, versus just this sample, may be exceedingly small. In summary, Table 3 indicates that the difference between the results of the survey do not reflect substantial differences in the opinions of the population of potential jurors.

Table 3. Confidence Intervals For Those Believing that the Defendant is Definitely or Probably Guilty

Central Divisional Area, AL	60.5 – 70.5 %
Eastern Divisional Area, AL	57.1 – 67.1 %
Northern/Western Divisional Areas, AL	53.6 – 63.6 %
Nashville Division, TN	49.7 – 59.7 %
Knoxville Division, TN	52.7 – 62.7 %
Seattle Division, WA	36.5 – 46.5 %
Milwaukee Division, WI	44.7 – 54.7 %
Cincinnati (Eastern) Division, OH	42.0 – 52.0 %

(3) Beyond the limited quantitative difference between the Central Divisional Area of Alabama and other possible venues, as discussed above, there was no discernable qualitative difference in the level of prejudice toward the defendant or emotional response to the crime expressed in the open-ended responses to the questions asking what the respondents remember about the crime (Questions 3 and 5). Only seven respondents in the Central Divisional Area survey indicated any judgment about the defendant. The only inflammatory statement was that he “may get the death penalty and I think he should.” The other judgmental comments were more akin to “they finally caught him and I was so glad.” By comparison, in the Nashville survey, for example, four respondents expressed judgmental attitudes, such as “that pro-life wacko wanted to get revenge for killing all those babies” and “that it was a fanatic against abortions that thought they were doing the right thing.”

Nowhere in the defense surveys is there a question that gauges the *intensity* of the respondents’ opinions about the defendant’s guilt. In deciding to change the venue of the Oklahoma City Bombing trial, Judge Matsch was impressed by the measures of how certain people were about

their opinions and the intensity of their anger and willingness to impose the death penalty.⁴⁵ Using willingness to impose the death penalty as an indicator of the intensity of the surveys respondents' attitudes toward the defendant, we find that respondents in Cincinnati are most likely to believe the defendant, if convicted, should receive the death penalty (see Table 4). In fact, residents of Seattle and Birmingham are almost identical in their beliefs that the defendant should receive the death penalty if convicted. Hence while Seattle residents may be considerably less certain of the defendant's guilt, they express as great a level of intensity of opinions as Birmingham residents.⁴⁶

Table 4. Attitude Toward the Death Penalty for the Defendant

<i>Survey Area</i>	<i>% Believing the Defendant Should Be Sentenced to Death if Convicted</i>
Central Divisional Area, AL	52.8
Eastern Divisional Area, AL	58.5
Northern/Western Divisional Areas, AL	49.8
Nashville Division, TN	46.5
Knoxville Division, TN	48.8
Seattle Division, WA	51.9
Milwaukee Division, WI	53.0
Cincinnati (Eastern) Division, OH	60.7

Summary

Our analysis of the survey results indicates that they are insufficient to serve as the foundation for a change of venue. The survey is marred by numerous weaknesses and Professor Haney's analysis only magnifies the limitations. The problems with the surveys and the analyses based upon them are as extensive as those for the change of venue surveys in the *United States v. Hernandez* where the court denied the change of venue, concurring with the state's assertion that

⁴⁵ *United States v. McVeigh*, 918 F. Supp. 1467 (W.D. Okla. 1996).

⁴⁶ What differences exist are even smaller when you take into account the width of the confidence intervals, as discussed above. For example, while the percent of the population who believes the defendant deserves the death penalty if convicted may be as low as 47.8% in Birmingham it may be as high as 51.5% in Nashville.

the survey was “unworthy of the Court’s reliance due to numerous flaws in (the) procedures and conclusions which call into question the validity of (the) survey.”⁴⁷

CONCLUSIONS

We reach two conclusions based on our analysis of the media coverage and survey data. First, we conclude that the media coverage has been neither quantitatively extensive enough nor qualitatively extreme enough to justify the defenses claim of presumptive juror prejudice.

Presumptive juror prejudice, as stated in *Mayola v. Alabama*, “is confined to those instances where the petitioner can demonstrate an ‘extreme situation’ of inflammatory pretrial publicity that literally saturated the community.”⁴⁸ This is clearly not the case here. Any case of this scope will generate considerable publicity wherever it is tried, but there is no evidence of the “carnival atmosphere” as was the case in *Rideau v. Louisiana*.⁴⁹

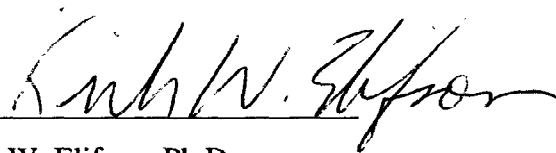
Our second finding is that the defense survey does not indicate a preponderance of actual bias in the Central Divisional Area of Alabama. The results simply do not reflect a venire tainted by media coverage. In fact the results of the Birmingham-area survey are only marginally different than the other surveys. With this in mind, we argue that the prospective jury pool for the Northern District of Alabama, Central Divisional Area, Southern Division is more than adequately large enough to select a fair and impartial jury. According to the Alabama Secretary of State Elections Division, there are over 477,000 available jurors. By county, as of September 2003 there are 364,784 registered voters in Jefferson County, 86,746 in Shelby County, and 25,677 in Blount County. These figures, which reflect a significant venue, indicate that there are more than an adequate number of jurors from which to draw a fair and impartial jury. Since there is clearly not presumed prejudice in this case, based on our media analysis, and since there is no evidence of actual prejudice, based on our critique of the defense surveys, then the appropriate course is to eliminate individual jurors with demonstrable prejudice through the voir dire process.

⁴⁷ *United States v. Hernandez*, 106 F. Supp. 2d 1317, 1322 (S.D. Fla. 2000).

⁴⁸ *Mayola v. Alabama*, 623 F.2d 992, 997 (5th Cir. 1980).

⁴⁹ *Rideau v. Louisiana*, 373 U.S. 723 (1963).

FURTHER, the Affiant sayeth not.

A handwritten signature in black ink, appearing to read "Kirk W. Elifson", written over a horizontal line.

Kirk W. Elifson, Ph.D.

A handwritten signature in black ink, appearing to read "Lesley Williams Reid", written over a horizontal line.

Lesley Williams Reid, Ph.D.

Appendix A. Text of Defense Surveys⁵⁰

February-March 2004

Hello. My name is _____ and I am calling for Southern Opinion Research. We are conducting a survey about an important issue facing this part of Alabama. We are not trying to sell you anything. Rather we are trying to find out what citizens think about this issue.

Is this ____? (IF NOT CORRECT NUMBER, TERMINATE INTERVIEW)

It is important that we interview a random sample of people so that the results of our survey will truly represent all citizens living in this part of Alabama. We have found that the easiest way to obtain this random sample is to interview the registered voter living in this household who had the last or most recent birthday. I don't mean the youngest of these individuals. Rather I want to talk to the registered voter whose birthday occurred most recently. Is that person at home?

IF RESPONDENT AVAILABLE: start questionnaire

IF RESPONDENT NOT AVAILABLE: arrange callback:

(a) When would be a good time for us to call in order to talk with this person? (RECORD ON CALL SHEET)

(b) Who should we ask to speak with?
(RECORD ON CALL SHEET. REPEAT NAME BACK TO BE SURE YOU HAVE IT. IF RESPONDENT OBJECTS, SAY 'WE ONLY NEED THE PERSON'S FIRST NAME, THE LAST NAME IS UNNECESSARY,')

IF NECESSARY: Hello. This is _____ calling from Southern Opinion Research.

ALL RESPONDENTS: (As I stated before) We are conducting a survey about an important issue facing this part of Alabama. We would greatly appreciate your help in doing this survey. The interview will only take about _____ minutes. All your answers will be held completely confidential.

Before we begin, let me make one thing certain. Are you currently registered to vote in Alabama?
(If YES, continue. If NO, terminate interview)

⁵⁰ This is text of the survey of the Northern and Western Divisional Areas of Alabama. The text of the questions did not differ across the different surveys.

<u>Probes</u>	STUDY	— — —
What do you mean by that?	IDENTIFICATION	— — —
<u>Tell me more about that.</u>	Respondent's sex:	1 MALE 2 FEMALE

Q-1 Now, Do you think that each of the following is a very serious, serious, not very serious or not at all serious problem in this part of Alabama? (**Rotate order of Q-1a to Q-1c**)

	VERY SERIOUS	SERIOUS	NOT VERY SERIOUS	NOT ALL SERIOUS	DK/NA
(a) the quality of the public schools	1	2	3	4	9
(b) the quality of local government	1	2	3	4	9
(c) the availability of jobs	1	2	3	4	9

Q-2 Now, let me ask you to think about another topic. Thinking back over the last six years or so, that is back to 1998, do you recall reading or hearing anything about any specific murder case which occurred in the Birmingham, Alabama area?

- 1 YES
- 2 NO Skip to Q-4
- 9 DK/NA Skip to Q-4

Q-3 What do you remember reading or hearing about this case? (Anything else?)

Q-4 Okay. Do you recall hearing or reading about a murder case involving a bomb being set off outside a women's health clinic in Birmingham, Alabama in January, 1998?

- 1 YES Ask Q-5 AND Q-6, then skip TO Q-9
- 2 NO Skip to Q-7
- 9 DK/NA Skip to Q-7

Q-5 What do you remember reading or hearing about this case? (Anything else?)

Q-6 Alright. As you may know, the bomb which exploded outside the Birmingham abortion clinic killed a police officer and injured a nurse. The person charged with the bombing is Eric Robert Rudolph. He was the subject of a large FBI manhunt in the mountains of western North Carolina which lasted for several years. He has been accused of being involved in several bombings in the Atlanta area, including one which took place during the Olympics. Based upon what you know about the Birmingham abortion clinic bombing case, do you think that Eric Robert Rudolph is definitely guilty, probably guilty, possibly guilty, possibly not guilty, probably not guilty or definitely not guilty?

- 1 DEFINITELY GUILTY
- 2 PROBABLY GUILTY
- 3 POSSIBLY GUILTY
- 4 POSSIBLY NOT GUILTY
- 5 PROBABLY NOT GUILTY
- 6 DEFINITELY NOT GUILTY
- 9 DK/NA

Q-7 Now let me ask you about an event which occurred in Birmingham, Alabama in January, 1998. This event involved a bomb which exploded outside an abortion clinic. The explosion killed a police officer and injured a nurse. The person charged with the Birmingham abortion clinic bombing is Eric Robert Rudolph. He was the subject of a large FBI manhunt in the mountains of western North Carolina which lasted for several years. He has been accused of being involved in several bombings in the Atlanta area, including one which took place during the Olympics. Do you recall reading or hearing anything about this event?

1 YES

2 NO Skip to Q-9

9 DK/NA Skip to Q-9

Q-8 Based upon what you know about the Birmingham abortion clinic bombing case, do you think that Eric Robert Rudolph is definitely guilty, probably guilty, possibly guilty, possibly not guilty, probably not guilty or definitely not guilty?

1 DEFINITELY GUILTY

2 PROBABLY GUILTY

3 POSSIBLY GUILTY

4 POSSIBLY NOT GUILTY

5 PROBABLY NOT GUILTY

6 DEFINITELY NOT GUILTY

9 DK/NA

Q-9 Do you favor or oppose of the death penalty for a person convicted of committing an intentional murder?

1 FAVOR

2 OPPOSE

9 DK/NA

Q-10 If Eric Robert Rudolph is convicted of murder in the Birmingham abortion clinic bombing case, then what sentence do you think he should receive --

(1) THE DEATH PENALTY

or

(2) LIFE IMPRISONMENT WITHOUT THE POSSIBILITY OF PAROLE

(9) DK/NA **[Do not read]**

Now, for statistical reasons, let me ask a few questions about you.

Q-81 What was your age on your last birthday? _____

Q-82 In what county do you live?

(Do not read responses)

- 01 BIBB
- 02 COLBERT
- 03 CULLMAN
- 04 FAYETTE
- 05 FRANKLIN
- 06 GREENE
- 07 JACKSON
- 08 LAMAR
- 09 LAUDERDALE
- 10 LAWRENCE
- 11 LIMESTONE
- 12 MADISON
- 13 MARION
- 14 MORGAN
- 15 PICKENS
- 16 SUMTER
- 17 TUSCALOOSA
- 18 WALKER
- 19 WINSTON
- 98 OTHER
- 99 DK/NA

Q-83 What is your zip code? _____

Q-84 What was the last grade or year of school you attended?

(Do not read responses)

- 1 0-8 GRADES
- 2 9-11 GRADES
- 3 COMPLETED HIGH SCHOOL
- 4 BUSINESS/TECHNICAL SCHOOL
- 5 SOME COLLEGE
- 6 COMPLETED COLLEGE
- 7 GRADUATE/PROFESSIONAL SCHOOL
- 9 DK/NA

Q-85 How many individuals, 18 years of age or older, live in your household?

- 1 ONE
- 2 TWO
- 3 THREE
- 4 FOUR
- 5 FIVE
- 6 SIX
- 7 SEVEN
- 8 EIGHT OR MORE
- 9 DK/NA

Q-86 How many separate telephone lines or numbers do you have in your home?

- 1 ONE
- 2 TWO
- 3 THREE
- 4 FOUR
- 5 FIVE
- 6 SIX
- 7 SEVEN
- 8 EIGHT OR MORE
- 9 DK/NA

Q-87 What is your current, or more recent, primary occupation?
(PROBE - If retired or unemployed - What was your primary occupation when you did work?)
(PROBE - Get occupation, not place of employment)

Q-88 Finally, can you tell me if you are white, black, Hispanic or a member of some other group?

- 1 WHITE
- 2 BLACK
- 3 HISPANIC
- 4 OTHER
- 9 DK/NA

Thank you for your cooperation. This is the end of the interview.

Respondent's sex: 1 MALE
 2 FEMALE

Date of interview: _____
Interviewer's initials: _____
Telephone exchange: _____

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Knox College	B.A.	June, 1965
Vanderbilt University	M.A.	June, 1968
Vanderbilt University	Ph.D.	May, 1973
University of Michigan	Visiting Scholar	1973, 1978

Professional Appointments

Captain, United States Army, Military Intelligence	1970-1971
Associate Director, African American Research Fisk University	1971-1972
Assistant Professor, Department of Sociology Georgia State University	1972-1977
Associate Professor, Department of Sociology Georgia State University	1977-1993
Director of Graduate Studies, Department of Sociology, Georgia State University	1977-1980
Chair, Department of Sociology Georgia State University	1986-1995
Professor, Department of Sociology Georgia State University	1994-present

Areas of Specialization

Quantitative Methodology and Statistics
Survey Research
Qualitative Methodology and Analysis
Deviant Behavior (Alcohol and Drug Abuse)
Medical Sociology
HIV and Social Behavior

Courses Taught

Introduction to Sociology
Social Statistics
Research Methodology
Intermediate Sociological Statistics - M.A. level
Research Methodology - M.A. level
Multivariate Data Analysis - Ph.D. level
Advanced Research Methodology - Ph.D. level
Sociology of Religion
Sociology of Religion - Ph.D. level
Medical Sociology
Medical Sociology - Ph.D

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Foundation for Child Development, Co-investigator with Claire E. Sterk, "Developing a Multi-Measure Assessment of the Social Ecology of Two Communities in Atlanta." Supplemental monies from Georgia State University, 1994.

U.S. Department of Justice, Office of Justice Programs, National Institute of Justice, Principal Investigator, "Atlanta (GA) Drug Use Forecasting Collection," 1996-1997.

National Institute of Health, National Institute on Drug Abuse. Co-Principal Investigator with Claire E. Sterk (Emory University). "HIV Gender-Specific Intervention for At-Risk Women." June 1997- June 2001

National Institute of Health, National Institute on Drug Abuse. Co-Principal Investigator with Claire E. Sterk (Emory University). "Visual Ethnography and HIV Risk," 1997-1999.

National Institute of Health, National Institute on Drug Abuse. Principal Investigator with Claire E. Sterk (Emory University). "Emerging Drugs and Users: Social and Health Consequences." July 1999-June 2004.

National Institute of Health, National Institute on Drug Abuse. Co-Principal Investigator with Claire Sterk (Emory University). "Methamphetamine: Rural and Urban Use Patterns." 1999-2000.

National Institute of Health, National Institute on Drug Abuse. Co-Principal Investigator with Claire E. Sterk (Emory University). "Young Adults and Drug Use: Careers and Familial Factors." March 2001-February 2005.

National Institute of Health, National Institute on Drug Abuse. Co-Principal Investigator with Claire E. Sterk (Emory University). "Club Drugs: Ecstasy Use Patterns and HIV Risk." April 2001-March 2005.

National Institute of Health, National Institute on Drug Abuse. Co-Principal Investigator with Claire E. Sterk (Emory University). "Current Smokers: A Phenomenological Inquiry." Funding forthcoming.

LESLEY WILLIAMS REID

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EDUCATION

Ph.D. 2000. Tulane University. Dissertation: *Economic Restructuring, Political Ideologies, and Urban Crime Rates: 1947-1998*.

M.A. 1997. Tulane University. Thesis: *The Status of Children in the United States: State-Level Determinants of Social Spending on Youth*.

B.A. 1993. Wake Forest University. Major in Sociology, minor in Women's Studies. Cum Laude with Honors in Sociology.

CURRENT POSITION

Assistant Professor
Georgia State University

AREAS OF SPECIALIZATION

Urban sociology, criminology, stratification, statistics, and research methods.

PUBLICATIONS

Books

Crime in the City: A Political and Economic Analysis of Urban Crime. Lesley Williams Reid. 2003. New York, NY: LFB Scholarly Publishing.

Journal Articles

"The Gender Gap In Fear: Assessing the Relative Effects of Gender On Fear of Crime and Perceived Risk of Victimization." Lesley Williams Reid and Miriam Konrad. 2004. Forthcoming at *Sociological Spectrum* 24:3.

"Integrating Economic Dualism and Labor Market Segmentation: The Effects of Race, Gender, and Employment Status, 1972-2000." Lesley Williams Reid and Beth A. Rubin. 2003. *Sociological Quarterly* 44: 405-32.

“Black-White Income Inequality and Metropolitan Socioeconomic Structure.” Charles Jaret, Lesley Williams Reid, and Robert M. Adelman. 2003. *Journal of Urban Affairs* 25: 305-333.

“The Drugs-Guns Relationship: Exploring Dynamic and Static Models.” Lesley Williams Reid. 2001. *Contemporary Drug Problems* 28: 651-677.

“The Status of Children in the United States: State-Level Determinants of Social Spending on Youth.” Lesley Williams Reid. 1999. *Sociological Spectrum* 19: 299-323.

“Fear of Crime and Collective Action: An Analysis of Coping Strategies.” Lesley Williams Reid, J. Timmons Roberts, Heather Munro Hilliard. 1998. *Sociological Inquiry* 68: 312-28.

Other Publications

“Political Economy and Crime in the City.” Lesley Williams Reid. 2004. *Continuum: The Journal of the Teach For America Alumni Movement*. Winter.

“The Double-Edged Sword of Gentrification in Atlanta.” Lesley Williams Reid and Robert M. Adelman. 2003. *Footnotes* 31: Number 4.

“Radical Criminology.” Lesley Williams Reid. 2002. Pp. 1338-1342 in David Levinson (ed.) *The Encyclopedia of Crime and Punishment*. Thousand Oaks, CA: Sage Publications.

“Book Review of *Economic Dimensions of Crime* Edited by Nigel C. Fielding, Alan Clarke and Robert Witt.” Lesley Williams Reid. 2002. *Contemporary Sociology* 31: 86-87.

Manuscripts Under Review

“Jobs, Poverty, and Income in American Metropolises: Do Immigrants Really Hurt the Economic Opportunities of Blacks?” 2003. Robert M. Adelman, Cameron Lippard, Charles Jaret, and Lesley Williams Reid. Under revision for invited resubmission to *Social Science Quarterly*.

“Low Quality Employment Concentration and Crime: An Examination of Metropolitan Labor Markets.” Harald E. Weiss and Lesley Williams Reid. Under revision for invited resubmission to *Sociological Perspectives*.

“The Immigration-Crime Relationship: Evidence Across U.S. Metropolitan Areas.” 2003. Lesley Williams Reid, Harald E. Weiss, Robert M. Adelman and Charles Jaret. Under review at *Social Science Research*.

Work In Progress

“Macro-Level Determinants of Execution Rates: Disaggregating the Effects of Racial and Economic Inequality.” 2004. Lesley Williams Reid. In preparation for submission to *Social Forces*.

“Black-White Inequality In Women’s Earnings: The Effects Of Metropolitan Socioeconomic Structure.” 2004. Lesley Williams Reid, Cristina Gheorghiu Stephens and Robert M. Adelman. In preparation for submission to...

“Boom-Town Crime, Bust-Town Crime: A Comparative Analysis of Crime in Boston and Detroit.” Lesley Williams Reid. 2004. In preparation for submission to *Criminology*.

“Crime Southern Style: A Comparative Analysis of Crime in Atlanta and New Orleans.” Lesley Williams Reid. 2004. In preparation for submission to *Social Science Research*.

Kirkwood: A Community History. A community oral history project. Funded by the Georgia Humanities Council.

PRESENTATIONS

“Black-White Inequality In Women’s Earnings: The Effects Of Metropolitan Socioeconomic Structure.” Reid, Lesley Williams, Cristina Gheorghiu Stephens and Robert M. Adelman. 2004. A paper presented at the annual meeting of the Southern Sociological Society, Atlanta, GA.

“Author Meets Critic: *Race and the Invisible Hand*.” Invited Panelist. 2004. Annual meeting of the Southern Sociological Society, Atlanta, GA.

“Low-Skill Service Sector Size as a Predictor of Crime in U.S. Metropolitan Areas.” Weiss, Harald E. and Lesley Williams Reid. 2003. A paper presented at the annual meeting of the American Society of Criminology, Denver, CO.

“The Influence of Immigration on Metropolitan Crime Rates.” Reid, Lesley Williams, Harald Ernst Weiss, Robert M. Adelman and Charles Jaret. 2003. A paper presented at the annual meeting of the American Society of Criminology, Denver, CO.

“Crime in the Same Old “New South” – Atlanta, 1950-2000.” Reid, Lesley Williams. 2003. A paper presented at the annual meeting of the Society for the Study of Social Problems, Atlanta, GA.

“Examining the Effect of Immigration on Metropolitan Economies and Urban Life.” Adelman, Robert M., Charles Jaret, and Lesley Williams Reid. 2003. A paper presented at the annual meeting of the Southern Sociological Society, New Orleans, LA.

“Depopulation and Pronatalism: The Case of Japan.” Kii, Toshi and Lesley Williams Reid. 2003. A paper presented at the annual meeting of the Southern Sociological Society, New Orleans, LA.

- “Employment and Crime: The Effects of Labor Market Structure on Metropolitan Crime Rates.” Harald Ernst Weiss and Lesley Williams Reid. 2002. A paper presented at the annual meeting of the American Society of Criminology, Chicago, IL.
- “Using the Census 2000 in Teaching and Research.” Lesley Williams Reid, Robert M. Adelman, and Charles Jaret. 2002. Departmental Colloquium. Georgia State University, Department of Sociology.
- “The Gender Gap in Fear: Assessing The Relative Effects of Gender on Fear of Crime and Perceived Risk of Victimization.” Lesley Williams Reid and Miriam Konrad. 2002. A paper presented at the annual meetings of the American Sociological Society, Chicago, IL.
- “Crime and the Labor Market: The Effects of Perceived Economic Returns to Crime.” Lesley Williams Reid. 2002. A paper presented at the annual meetings of the Southern Sociological Society, Baltimore, MD.
- “Black-White Income Inequality and Metropolitan Socioeconomic Structure.” Charles Jaret, Lesley Williams Reid, and Robert M. Adelman. 2001. A paper presented at the annual meeting of the Urban Affairs Association, Detroit, MI.
- “Modeling the Drugs-Guns Relationship: Dynamic and Static Approaches.” Lesley Williams Reid. 2001. A paper presented at the annual meetings of the Southern Sociological Society, Atlanta, GA.
- “Economic Restructuring and Urban Crime Rates, 1947-1998.” Lesley Williams Reid. 2001. An invited presentation at the Rational Choice Miniconference concurrent with the American Sociological Association meetings, Anaheim, CA.
- “Boom-Town Crime, Bust-Town Crime: A Comparative Analysis of Crime in Boston and Detroit.” Lesley Williams Reid. 2000. A paper presented at the annual meeting of the American Society of Criminology, San Francisco, CA.
- “The Political Economy of Crime in New Orleans.” Lesley Williams Reid. 2000. A paper presented at the annual meeting of the Southern Sociological Society, New Orleans, LA.
- “Economic Restructuring, Political Shifts, and Crime Rates.” Lesley Williams Reid. 1999. A paper presented at the annual meeting of the American Society of Criminology, Toronto, Ontario, Canada.
- “Macro-Level Determinants of Execution Rates: Disaggregating the Effects of Racial and Economic Inequality.” Lesley Williams Reid. 1999. A paper presented at the annual meeting of the American Sociological Association, Chicago, IL.

“The Relationship between Inequality and Crime: Theory and Evidence from the World-System Perspective.” Lesley Williams Reid. 1999. A paper presented at the annual meeting of the Southern Sociological Society, Nashville, TN.

“Race and Inequality in Black’s *The Behavior of Law*.” Lesley Williams Reid. 1998. A paper presented at the annual meeting of the Mid-South Sociological Association, Lafayette, LA.

“A Moral Economy in the Absence of a Subsistence Ethic: Coca Production and Peasant Organization in Bolivia.” Lesley Williams Reid. 1998. A paper presented at the annual meeting of the American Sociological Association, San Francisco, CA.

“The Political Economy of Crime in the Twentieth Century: A Time Series Analysis of the Unemployment-Crime Relationship.” Lesley Williams Reid. 1998. A paper presented at the annual meeting of the Southern Sociological Society, Atlanta, GA.

“Integrating Economic Dualism and Labor Market Segmentation: The Effects of Race, Gender, and Employment Status, 1972-1996.” Lesley Williams Reid and Beth A. Rubin. 1998. A paper presented at the annual meeting of the Southern Sociological Society, Atlanta, GA.

“The Status of Children in the United States: State-Level Determinants of Social Spending on Youth.” Lesley Williams Reid. 1997. A paper presented at the annual meeting of the Mid-South Sociological Association, Huntsville, AL.

“Coping With Crime in the Murder Capital: Perception, Concern and Action.” Lesley Williams Reid, J. Timmons Roberts, and Heather Munro Hilliard. 1997. A paper presented at the annual meeting of the Mid-South Sociological Association, Huntsville, AL.

“Juvenile Crime as Pre-political Insurgency: State Level Determinants of Social Spending on Youth.” Lesley Williams Reid. 1997. A paper presented at the annual meeting of the Southern Sociological Society, New Orleans, LA.

“Gender, Race and the Textbook Adoption Policies of North Carolina and California.” Lesley Roger Williams. 1993. A paper presented at the annual meeting of the South West Social Science Association, New Orleans, LA.

RESEARCH GRANTS

“Evaluating Levels of Student Violence and Drug Use in West Central Georgia.” Jim Ainsworth, Lesley Williams Reid and Eric Stewart. 2003. \$12,000. West Central Georgia Practice Improvement Collaborative, Center for Substance Abuse Treatment, Substance Abuse and Mental Health Services Administration, U.S. Department of Health and Human Services. (Grant number 6UD1TI12671.)

Public Program Grant, Georgia Humanities Council. 2003. \$5000. (Grant number 2000-125G.)

Georgia State University Sociology Summer Research Grant. 2003.

Departmental Research Support Award, Georgia State University. 2002. \$1000.

Georgia State University Sociology Summer Research Grant. 2001.

“Doctoral Dissertation Research: Economic Restructuring, Political Ideologies and Urban Crime.” Beth A. Rubin and Lesley Williams Reid. National Science Foundation. 2000. \$7172. (Award number 000240.)

HONORS, AWARDS AND OTHER FUNDED ACTIVITIES

Workshop Participant, Inter-university Consortium for Political and Social Research Summer Program in Quantitative Methods of Social Research Workshop on the Census 2000. Funded by the Census Bureau and the Department of Sociology, Georgia State University. 2002.

Writing Across the Curriculum Faculty Course Development Grant. Georgia State University. 2001. \$2000.

Workshop Participant, Inter-university Consortium for Political and Social Research Summer Program in Quantitative Methods of Social Research Workshop on the Multi-City Study of Urban Inequality. Funded by the Ford Foundation. 1999.

Program Scholar, Inter-university Consortium for Political and Social Research Summer Program in Quantitative Methods of Social Research. 1998.

Graduate Student of the Year Award. Department of Sociology, Tulane University. 1998.

Pass with Distinction. Comprehensive Examination in Social Theory. 1998.

Best Graduate Student Paper. Annual Meeting of the Mid-South Sociological Association, Huntsville, AL. 1997.

TEACHING EXPERIENCE

2000-2004 Georgia State University:
Crime and Punishment
Introductory Sociology
Social Inequality (Graduate Level)
Social Research Methods
Social Statistics
Wealth, Power and Inequality
Work and Occupations (Graduate Level)
Directed Readings/Research Practicum:
Social Inequality and Intervention

Crime and Communities
Strain, Anomie and Crime
Presidential Scholar Mentoring
Summer Internship

1997-1999 Tulane University:
Wealth, Power and Inequality

1997-1999 Teaching Assistant. Tulane University:
Poverty, Race and Inequality in New Orleans; Environmental Sociology;
Introduction to Research Methods; Wealth, Power, and Inequality; Introduction to
Sociology; and Sociology of the Family.

1993-1995 Special Education Teacher, Jennings High School, Jennings, LA. Taught as a
member of the Teach For America national teachers' corps, under the Americorps
program.

SERVICE

University Service

2003 Workshop Presentation. "Using the 2000 Census in Teaching and Research."
Center for Neighborhood and Metropolitan Studies.

2002-present Member. Center for Neighborhood and Metropolitan Studies.

2002 Chair Triennial Evaluation Committee
Invited Panelist. Writing Across the Curriculum workshop.
Invited Panelist. "Careers in Education – Teaching and Beyond." Georgia State
University, Career and Job Search Services.

2001-2002 Faculty Advisor of ClubTFA.
GSU Alumni Recruiter for Teach For America.

1997-1998 Graduate Student Representative, Student Affairs Committee of the University
Senate. Tulane University.

1996-1997 Graduate School Representative, Associated Student Body. Tulane University.

1995-1997 Sociology Representative, Graduate Student Association. Tulane University.

Departmental Service

2004-present Sociology Club Faculty Advisor

2003-present Department of Sociology's Self Study Committee

2002-present	Teaching Committee Technology Committee
2002	Executive Committee
2001-present	MA Exam Committee Graduate Committee
2001	Development Committee AKD/Sociology Club Committee
1998-1999	Personnel Committee. Tulane University. Steering Committee Member, <i>Race in Academia</i> Lecture Series. Funded by the Tulane University Center for Scholars. Tulane University.
1997-1998	Social Sciences Student Representative, Graduate Council. Tulane University. President, Sociology Graduate Student Association. Tulane University.

Professional Service

2003	Presider, Session on <i>Gentrification in the South</i> . Annual meeting of the American Sociological Association, Atlanta, GA. Presider, Session on <i>Economic Restructuring and its Impact on Urban America</i> . Annual meeting of the American Sociological Association, Atlanta, GA. Local Arrangements Committee, Society for the Study of Social Problems.
2002	Presider, Session on <i>Death and Dying</i> . Annual meeting of the Southern Sociological Society, Baltimore, MD.
2000	Chairperson, Session on <i>Crime Over Time: Social Trends and Community Change</i> . Annual meeting of the American Society of Criminology, San Francisco, CA.
1999	Presider, Session on <i>Crime and Fear of Crime</i> . Annual meeting of the Southern Sociological Society, Nashville, TN.
1997-1999	Managing Editor, <i>Social Science Research</i> .

Reviewer For: *National Science Foundation*
Work and Occupations
Social Science Research
Prentice Hall
Wadsworth/Thompson Learning
A.B. Longman

McGraw-Hill

Memberships: American Sociological Association
American Society of Criminology
Southern Sociological Society

Community Service

- 2004-present Representative. Atlanta Public Schools Principal Selection Community Panel.
Served in an advisory capacity to APS in hiring the principal for Toomer Elementary.
Teach For America/Broad Foundation School Board Shadowing Program.
Worked one-on-one with active APS School Board member.
- 2003-present Member, Kirkwood School Coalition. Conducted a survey of over 150 neighborhood residents assessing needs of and attitudes toward local elementary school.
- 2002-present Chair, Kirkwood History Committee. Through community collaboration, conducted oral history interviews of residents of transitional neighborhood. Created website to make interview videotapes and transcripts available to the public.